

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3454 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KALOTRA MOTIBHAI NARANBHAI

Versus

STATE BANK OF SAURASHTRA

Appearance:

MR TR MISHRA for Petitioner

MR MR ANAND for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 12/12/2000

ORAL JUDGEMENT

1. Kalotra Motibhai Naranbhai - petitioner has filed this petition under Article 226 and 227 of the Constitution of India challenging the award dated 27th December, 1989 passed by the Industrial Tribunal Central, Ahmedabad in Reference (ITC) No.15 of 1980 between The State Bank of Saurashtra, Bhavnagar and The Workmen Employed, wherein the Tribunal was pleased to declare that the termination of the service of the workman

concerned with effect from 20th April, 1978 was perfectly justified and he is not entitled to any relief.

2. The facts giving rise to this petition are as under :-

2:1 The petitioner was appointed in the services of the State Bank of Saurashtra on 31st January, 1977 and worked with the Bank with artificial intermittent breaks upto 20th April, 1978. The particulars of the period of work done by the petitioner which was not in dispute is set out hereunder :-

Period Nos of Worked Place
days

31/01/1977 1 Temporary Peon Chuda Br.

21/02/1977 to 8 -do- Chuda Br.

28/02/1977

01/03/1977 to 176 Temp.Godown Surendranagar Br.

23/08/1977 Chawkidar

17/09/1977 to 8 Temporary Peon Chuda Branch

24/09/1977

03/10/1977 to 6 -do- -do-

08/10/1977

19/10/1977 to 2 -do- -do-

20/10/1977

09/01/1978 to 5 -do- -do-

13/01/1978

01/02/1978 to 28 Temp.Godown -do-

28/02/1978 Chawkidar

01/03/1978 to 35 -do- -do-

04/04/1978

15/04/1978 to 6 -do- -do-

20/04/1978

2:2 In this petition, it was averred that the petitioner's service was terminated without any notice and without any reason.

2:3 Being aggrieved and dissatisfied by the aforesaid

action of the respondent-Bank, the petitioner raised the dispute demanding reinstatement with full back wages and continuity of service before the Industrial Tribunal Central at Ahmedabad. The Central Government in exercise of the power conferred under section 7A and Clause (d) of Sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), constituted as Industrial Tribunal with Shri R. C. Israni as its presiding Officer and referred the dispute between the employers in relation to the management of the State Bank of Saurashtra, Bhavnagar and their Workmen in respect of the matter specified in the Schedule annexed to the order of reference;

"Whether the action of the management of State Bank of Saurashtra, Bhavnagar, in terminating the services of Shri Kalotra Motibhai Narayanbhai sub-staff with effect from 20.04.1978 is justified? If no, to what relief is the Workmen concerned entitled?"

2:4 Ultimately, the matter was referred to the Industrial Tribunal, Ahmedabad and the Tribunal has stated above please to declare that the termination of the services of the respondent-Workman concerned with effect from 20th April, 1978 was perfectly justified and he was not entitled to any relief.

2:5 Being aggrieved and dissatisfied with the said judgment and order of the Industrial Tribunal, the petitioner has preferred this appeal before this Court.

3. Mr.T. R. Mishra, learned counsel for the petitioner contended that the order of termination was arbitrary and malafied. No notice even according to the Bank Rules was given to the Workman apart from mandatory provisions of section 25F, read with section 25G and H of the Industrial Disputes Act, 1947. It was further contended that the respondent - Bank used to give artificial intermittent breaks and does not allow anybody to complete 240 days of service with malafide intention. Therefore, the impugned action of terminating the services in an arbitrary manner was illegal, invalid and inoperative in law. It was further contended that the petitioner - Workman worked for more than 240 days as temporary watchman. Even on the basis of section 25-G of the Industrial Dispute Act, the petitioner's case would have been considered by the respondent - Bank. This petition was filed on 10th December, 1991 before this Court and this Court thereafter, issued Rule somewhere in February, 1993 which was made returnable on 12th April,

1993.

4. I have considered the submission of Mr.T. R. Mishra, learned counsel for the petitioner and he has relied upon section 25(B) definition of "continues services" for the purpose of this chapter and section 25(F) which provides conditions precedent to retrenchment of workman. Section 25(B) and section 25(F) reads as follows.

"Section 25-B. Definition of continuous service

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

Section 25-F.Conditions precedent to retrenchment of workmen - No workman employed in any industry who has been in continuous s ervice for not less than one years under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette."

5. Mr.T. R. Mishra, learned counsel for the petitioner has contended that in this case, the tribunal has observed that though petitioner has worked for 275

days. However, for the purpose of section 25F read with section 25B, number of days actually worked are not the total number of days but the days worked during the preceding twelve calendar months and in that way of the matter, the petitioner has worked only for 215 days and not worked for 240 days and, therefore, the reference application of the workman was dismissed. He has contended that approached of the Tribunal, this contrary to and inconsistent with the judgment of the Hon'ble Supreme Court in the case of The Workmen of American Express International Banking Corporation v/s. The Management of American Express International Banking Corporation, reported in 1985 (2) L.L.J. 539. The Hon'ble Supreme Court has observed in para-(5) at page-542 are as under :-

"The expression which we are required to construe is 'actually worked under the employer'. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc. The learned counsel for the Management would urge that only those days which are mentioned in the Explanation to S.25B(2) should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression 'actually worked under the employer'. The explanation is only clarification, as all explanations are, and cannot be used to limit the expanse worked under the employer' is capable of comprehending the days during which the workman was in employment and was paid wages - and we see no impediment to so construe the expression - there is no reason why the expression should be limited by the explanation. To give it any other meaning, then what we have done would bring the object of S.25F very close to frustration. It is not necessary to give examples of how 25F may be frustrated as they are too obvious to be stated".

6. It is submitted that in view of the judgment of the Hon'ble Apex Court, the order of the Tribunal is contrary to inconsistent with the aforesaid judgment of

the Hon'ble Supreme Court and, therefore, the Tribunal has clearly committed an error and came to the conclusion that when it hold that the petitioner - Workman has not completed 240 days of service, though infact, actually he has worked for 275 days, the Tribunal has rejected, sundays and other holidays out of that. In view of the Apex Court judgment in the case of The Workmen of American Express International Banking Corporation v/s. The Management of American Express International Banking Corporation, (Supra), one has to consider that the total days on which the workman was in employment including the saturday and sunday, if that is shown, the workman had completed 240 days, if that is shown the termination is contrary to section 25F of the Industrial Dispute Act and, therefore, also the same is ordered in bad in law in this behalf.

7. In my view the order of the Tribunal is illegal, invalid and contrary inconsistent with the judgment of the Hon'ble Supreme Court in the case of The Workmen of American Express International Banking Corporation v/s. The Management of American Express International Banking Corporation, and therefore, the Tribunal has not properly appreciate interpreted under section 25F of the Industrial Act and I therefore, direct the Industrial Tribunal to decide this reference a fresh in accordance with law laid down by this Court in this behalf. It is not possible me to give any relief. In view of the fact that in this case, the Tribunal has passed the award on 27th December, 1989 whereas, 11 years have passed. We are not aware, when the petitioner will be working at this stage. Rule is made absolute to the aforesaid extent.

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